

## [COMMITTEE PRINT]

OCTOBER 2, 2001

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 2269  
OFFERED BY MR. BOEHNER**

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Retirement Security  
3 Advice Act of 2001”.

4 **SEC. 2. PROHIBITED TRANSACTION EXEMPTION FOR THE**  
5 **PROVISION OF INVESTMENT ADVICE.**

6 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT  
7 INCOME SECURITY ACT OF 1974.—

8 (1) EXEMPTION FROM PROHIBITED TRANS-  
9 ACTIONS.—Section 408(b) of the Employee Retirement  
10 Income Security Act of 1974 (29 U.S.C.  
11 1108(b)) is amended by adding at the end the fol-  
12 lowing new paragraph:

13 “(14)(A) Any transaction described in subpara-  
14 graph (B) in connection with the provision of invest-  
15 ment advice described in section 3(21)(A)(ii), in any  
16 case in which—

1           “(i) the investment of assets of the plan  
2           are subject to the direction of plan participants  
3           or beneficiaries,

4           “(ii) the advice is provided to the plan or  
5           a participant or beneficiary of the plan by a fi-  
6           duciary adviser in connection with any sale, ac-  
7           quisition, or holding of a security or other prop-  
8           erty for purposes of investment of plan assets,  
9           and

10           “(iii) the requirements of subsection (g)  
11           are met in connection with the provision of the  
12           advice.

13           “(B) The transactions described in this sub-  
14           paragraph are the following:

15           “(i) the provision of the advice to the plan,  
16           participant, or beneficiary;

17           “(ii) the sale, acquisition, or holding of a  
18           security or other property (including any lend-  
19           ing of money or other extension of credit associ-  
20           ated with the sale, acquisition, or holding of a  
21           security or other property) pursuant to the ad-  
22           vice; and

23           “(iii) the direct or indirect receipt of fees  
24           or other compensation by the fiduciary adviser  
25           or an affiliate thereof (or any employee, agent,

1 or registered representative of the fiduciary ad-  
2 viser or affiliate) in connection with the provi-  
3 sion of the advice or in connection with a sale,  
4 acquisition, or holding of a security or other  
5 property pursuant to the advice.”.

6 (2) REQUIREMENTS.—Section 408 of such Act  
7 is amended further by adding at the end the fol-  
8 lowing new subsection:

9 “(g) REQUIREMENTS RELATING TO PROVISION OF  
10 INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—

11 “(1) IN GENERAL.—The requirements of this  
12 subsection are met in connection with the provision  
13 of investment advice referred to in section  
14 3(21)(A)(ii) provided to an employee benefit plan or  
15 a participant or beneficiary of an employee benefit  
16 plan by a fiduciary adviser with respect to the plan  
17 in connection with any sale, acquisition, or holding  
18 of a security or other property for purposes of in-  
19 vestment of amounts held by the plan, if—

20 “(A) in the case of the initial provision of  
21 the advice with regard to the security or other  
22 property by the fiduciary adviser to the plan,  
23 participant, or beneficiary, the fiduciary adviser  
24 provides to the recipient of the advice, at a time  
25 reasonably contemporaneous with the initial

1 provision of the advice, a written notification  
2 (which may consist of notification by means of  
3 electronic communication)—

4 “(i) of all fees or other compensation  
5 relating to the advice that the fiduciary ad-  
6 viser or any affiliate thereof is to receive  
7 (including compensation provided by any  
8 third party) in connection with the provi-  
9 sion of the advice or in connection with the  
10 sale, acquisition, or holding of the security  
11 or other property,

12 “(ii) of any material affiliation or con-  
13 tractual relationship of the fiduciary ad-  
14 viser or affiliates thereof in the security or  
15 other property,

16 “(iii) of any limitation placed on the  
17 scope of the investment advice to be pro-  
18 vided by the fiduciary adviser with respect  
19 to any such sale, acquisition, or holding of  
20 a security or other property,

21 “(iv) of the types of services provided  
22 by the fiduciary advisor in connection with  
23 the provision of investment advice by the  
24 fiduciary adviser, and

1                   “(v) that the adviser is acting as a fi-  
2                   duciary of the plan in connection with the  
3                   provision of the advice,

4                   “(B) the fiduciary adviser provides appro-  
5                   priate disclosure, in connection with the sale,  
6                   acquisition, or holding of the security or other  
7                   property, in accordance with all applicable secu-  
8                   rities laws,

9                   “(C) the sale, acquisition, or holding oc-  
10                  curs solely at the direction of the recipient of  
11                  the advice,

12                  “(D) the compensation received by the fi-  
13                  duciary adviser and affiliates thereof in connec-  
14                  tion with the sale, acquisition, or holding of the  
15                  security or other property is reasonable, and

16                  “(E) the terms of the sale, acquisition, or  
17                  holding of the security or other property are at  
18                  least as favorable to the plan as an arm’s  
19                  length transaction would be.

20                  “(2) STANDARDS FOR PRESENTATION OF IN-  
21                  FORMATION.—The notification required to be pro-  
22                  vided to participants and beneficiaries under para-  
23                  graph (1)(A) shall be written in a clear and con-  
24                  spicuous manner and in a manner calculated to be  
25                  understood by the average plan participant and shall

1 be sufficiently accurate and comprehensive to rea-  
2 sonably apprise such participants and beneficiaries  
3 of the information required to be provided in the no-  
4 tification.

5 “(3) EXEMPTION CONDITIONED ON CONTINUED  
6 AVAILABILITY OF REQUIRED INFORMATION ON RE-  
7 QUEST FOR 1 YEAR.—The requirements of para-  
8 graph (1)(A) shall be deemed not to have been met  
9 in connection with the initial or any subsequent pro-  
10 vision of advice described in paragraph (1) to the  
11 plan, participant, or beneficiary if, at any time dur-  
12 ing the 1-year period following the provision of the  
13 advice, the fiduciary adviser fails to maintain the in-  
14 formation described in clauses (i) through (iv) of  
15 subparagraph (A) in currently accurate form or to  
16 make the information available, upon request and  
17 without charge, to the recipient of the advice.

18 “(4) MAINTENANCE FOR 6 YEARS OF EVIDENCE  
19 OF COMPLIANCE.—A fiduciary adviser referred to in  
20 paragraph (1) who has provided advice referred to in  
21 such paragraph shall, for a period of not less than  
22 6 years after the provision of the advice, maintain  
23 any records necessary for determining whether the  
24 requirements of the preceding provisions of this sub-  
25 section and of subsection (b)(14) have been met. A

1 transaction prohibited under section 406 shall not be  
2 considered to have occurred solely because the  
3 records are lost or destroyed prior to the end of the  
4 6-year period due to circumstances beyond the con-  
5 trol of the fiduciary adviser.

6 “(5) EXEMPTION FOR PLAN SPONSOR AND CER-  
7 TAIN OTHER FIDUCIARIES.—

8 “(A) IN GENERAL.—Subject to subpara-  
9 graph (B), a plan sponsor or other person who  
10 is a fiduciary (other than a fiduciary adviser)  
11 shall not be treated as failing to meet the re-  
12 quirements of this part solely by reason of the  
13 provision of investment advice referred to in  
14 section 3(21)(A)(ii) (or solely by reason of con-  
15 tracting for or otherwise arranging for the pro-  
16 vision of the advice), if—

17 “(i) the advice is provided by a fidu-  
18 ciary adviser pursuant to an arrangement  
19 between the plan sponsor or other fidu-  
20 ciary and the fiduciary adviser for the pro-  
21 vision by the fiduciary adviser of invest-  
22 ment advice referred to in such section,

23 “(ii) the terms of the arrangement re-  
24 quire compliance by the fiduciary adviser

1 with the requirements of this subsection,  
2 and

3 “(iii) the terms of the arrangement  
4 include a written acknowledgment by the  
5 fiduciary adviser that the fiduciary adviser  
6 is a fiduciary of the plan with respect to  
7 the provision of the advice.

8 “(B) CONTINUED DUTY OF PRUDENT SE-  
9 LECTION OF ADVISER AND PERIODIC REVIEW.—  
10 Nothing in subparagraph (A) shall be construed  
11 to exempt a plan sponsor or other person who  
12 is a fiduciary from any requirement of this part  
13 for the prudent selection and periodic review of  
14 a fiduciary adviser with whom the plan sponsor  
15 or other person enters into an arrangement for  
16 the provision of advice referred to in section  
17 3(21)(A)(ii). The plan sponsor or other person  
18 who is a fiduciary has no duty under this part  
19 to monitor the specific investment advice given  
20 by the fiduciary adviser to any particular recipi-  
21 ent of the advice.

22 “(C) AVAILABILITY OF PLAN ASSETS FOR  
23 PAYMENT FOR ADVICE.—Nothing in this part  
24 shall be construed to preclude the use of plan  
25 assets to pay for reasonable expenses in pro-

1           viding investment advice referred to in section  
2           3(21)(A)(ii).

3           “(6) DEFINITIONS.—For purposes of this sub-  
4           section and subsection (b)(14)—

5                   “(A) FIDUCIARY ADVISER.—The term ‘fi-  
6                   duciary adviser’ means, with respect to a plan,  
7                   a person who is a fiduciary of the plan by rea-  
8                   son of the provision of investment advice by the  
9                   person to the plan or to a participant or bene-  
10                  ficiary and who is—

11                           “(i) registered as an investment ad-  
12                           viser under the Investment Advisers Act of  
13                           1940 (15 U.S.C. 80b–1 et seq.) or under  
14                           the laws of the State in which the fiduciary  
15                           maintains its principal office and place of  
16                           business,

17                           “(ii) a bank or similar financial insti-  
18                           tution referred to in section 408(b)(4),

19                           “(iii) an insurance company qualified  
20                           to do business under the laws of a State,

21                           “(iv) a person registered as a broker  
22                           or dealer under the Securities Exchange  
23                           Act of 1934 (15 U.S.C. 78a et seq.),

24                           “(v) an affiliate of a person described  
25                           in any of clauses (i) through (iv), or

1           “(vi) an employee, agent, or registered  
2           representative of a person described in any  
3           of clauses (i) through (v) who satisfies the  
4           requirements of applicable insurance,  
5           banking, and securities laws relating to the  
6           provision of the advice.

7           “(B) AFFILIATE.—The term ‘affiliate’ of  
8           another entity means an affiliated person of the  
9           entity (as defined in section 2(a)(3) of the In-  
10          vestment Company Act of 1940 (15 U.S.C.  
11          80a-2(a)(3))).

12          “(C) REGISTERED REPRESENTATIVE.—  
13          The term ‘registered representative’ of another  
14          entity means a person described in section  
15          3(a)(18) of the Securities Exchange Act of  
16          1934 (15 U.S.C. 78c(a)(18)) (substituting the  
17          entity for the broker or dealer referred to in  
18          such section) or a person described in section  
19          202(a)(17) of the Investment Advisers Act of  
20          1940 (15 U.S.C. 80b-2(a)(17)) (substituting  
21          the entity for the investment adviser referred to  
22          in such section).”.

23          (b) AMENDMENTS TO THE INTERNAL REVENUE  
24          CODE OF 1986.—

1           (1) IN GENERAL.—Subsection (d) of section  
2           4975 of the Internal Revenue Code of 1986 (relating  
3           to exemptions from tax on prohibited transactions)  
4           is amended—

5                   (A) in paragraph (14), by striking “or” at  
6           the end;

7                   (B) in paragraph (15), by striking the pe-  
8           riod at the end and inserting “; or”; and

9                   (C) by adding at the end the following new  
10          paragraph:

11                   “(16) If the requirements of subsection (f)(7)  
12          are met—

13                           “(A) the provision of investment advice re-  
14                           ferred to in subsection (e)(3)(B) provided by a  
15                           fiduciary adviser (as defined in subsection  
16                           (f)(7)(C)(i)) to a plan or to a participant or  
17                           beneficiary of a plan,

18                           “(B) the sale, acquisition, or holding of se-  
19                           curities or other property (including any exten-  
20                           sion of credit associated with the sale, acquisi-  
21                           tion, or holding of securities or other property)  
22                           pursuant to such investment advice, and

23                           “(C) the direct or indirect receipt of fees  
24                           or other compensation by the fiduciary adviser  
25                           or an affiliate thereof (or any employee, agent,

1 or registered representative of the fiduciary ad-  
2 viser or affiliate) in connection with the provi-  
3 sion of such investment advice.”.

4 (2) REQUIREMENTS.—Subsection (f) of such  
5 section 4975 (relating to other definitions and spe-  
6 cial rules) is amended by adding at the end the fol-  
7 lowing new paragraph:

8 “(7) REQUIREMENTS FOR EXEMPTION FOR IN-  
9 VESTMENT ADVICE PROVIDED BY FIDUCIARY ADVIS-  
10 ERS.—

11 “(A) IN GENERAL.—The requirements of  
12 this paragraph are met in connection with the  
13 provision of advice referred to in subsection  
14 (e)(3)(B), provided to a plan or a participant or  
15 beneficiary of a plan by a fiduciary adviser with  
16 respect to such plan, in connection with any  
17 sale or acquisition of a security or other prop-  
18 erty for purposes of investment of amounts held  
19 by such plan, if—

20 “(i) in the case of the initial provision  
21 of such advice by such fiduciary adviser to  
22 such plan, participant, or beneficiary, the  
23 fiduciary adviser provides to the plan, par-  
24 ticipant, or beneficiary, at the time of or  
25 before the initial provision of such advice,

1 a description, in writing or by means of  
2 electronic communication, of—

3 “(I) all fees or other compensa-  
4 tion relating to such advice that the  
5 fiduciary adviser or any affiliate  
6 thereof is to receive (including com-  
7 pensation provided by any third  
8 party) in connection with the provi-  
9 sion of such advice or in connection  
10 with such acquisition or sale,

11 “(II) any material affiliation or  
12 contractual relationship of the fidu-  
13 ciary adviser or affiliates thereof in  
14 such security or other property,

15 “(III) any limitation placed on  
16 the scope of the investment advice to  
17 be provided by the fiduciary adviser  
18 with respect to any such sale or acqui-  
19 sition, and

20 “(IV) the types of services of-  
21 fered by the fiduciary advisor in con-  
22 nection with the provision of invest-  
23 ment advice by the fiduciary adviser,

24 “(ii) in the case of the initial or any  
25 subsequent provision of such advice to such

1 plan, participant, or beneficiary, the fidu-  
2 ciary adviser, throughout the 1-year period  
3 following the provision of such advice,  
4 maintains the information described in  
5 subclauses (I) through (IV) of clause (i) in  
6 currently accurate form for availability,  
7 upon request and without charge, to the  
8 recipient of such advice,

9 “(iii) the fiduciary adviser provides  
10 appropriate disclosure, in connection with  
11 any such acquisition or sale, in accordance  
12 with all applicable securities laws,

13 “(iv) such acquisition or sale occurs  
14 solely at the discretion of the recipient of  
15 such advice,

16 “(v) the compensation received by the  
17 fiduciary adviser and affiliates thereof in  
18 connection with such acquisition or sale is  
19 reasonable, and

20 “(vi) the terms of such acquisition or  
21 sale are at least as favorable to such plan  
22 as an arm’s length transaction would be.

23 “(B) MAINTENANCE OF RECORDS.—A fi-  
24 duciary adviser referred to in subparagraph (A)  
25 who has provided advice referred to in such

1           subparagraph shall, for a period of not less  
2           than 6 years after the provision of such advice,  
3           maintain any records necessary for determining  
4           whether the requirements of the preceding pro-  
5           visions of this subsection and of subsection  
6           (d)(16) have been met. A prohibited transaction  
7           described in subsection (c)(1) shall not be con-  
8           sidered to have occurred solely because the  
9           records are lost or destroyed prior to the end of  
10          the 6-year period due to circumstances beyond  
11          the control of the fiduciary adviser.

12                   “(C) DEFINITIONS.—For purposes of this  
13          paragraph and subsection (d)(16)—

14                           “(i) FIDUCIARY ADVISER.—The term  
15                           ‘fiduciary adviser’ means, with respect to a  
16                           plan, a person who is a fiduciary of the  
17                           plan by reason of the provision of invest-  
18                           ment advice by such person to the plan or  
19                           to a participant or beneficiary and who  
20                           is—

21                                   “(I) registered as an investment  
22                                   adviser under the Investment Advisers  
23                                   Act of 1940 (15 U.S.C. 80b–1 et seq.)  
24                                   or under the laws of the State in

1 which the fiduciary maintains its prin-  
2 cipal office and place of business,

3 “(II) a bank or similar financial  
4 institution referred to in subsection  
5 (d)(4),

6 “(III) an insurance company  
7 qualified to do business under the  
8 laws of a State,

9 “(IV) a person registered as a  
10 broker or dealer under the Securities  
11 Exchange Act of 1934 (15 U.S.C. 78a  
12 et seq.),

13 “(V) an affiliate of a person de-  
14 scribed in any of subclauses (I)  
15 through (IV), or

16 “(VI) an employee, agent, or reg-  
17 istered representative of a person de-  
18 scribed in any of subclauses (I)  
19 through (V).

20 “(ii) AFFILIATE.—The term ‘affiliate’  
21 means an affiliated person, as defined in  
22 section 2(a)(3) of the Investment Company  
23 Act of 1940 (15 U.S.C. 80a-2(a)(3)).

24 “(iii) REGISTERED REPRESENTA-  
25 TIVE.—The term ‘registered representa-

1                   tive’ means a person described in section  
2                   3(a)(18) of the Securities Exchange Act of  
3                   1934 (15 U.S.C. 78c(a)(18)) or section  
4                   202(a)(17) of the Investment Advisers Act  
5                   of 1940 (15 U.S.C. 80b-2(a)(17)).”.

6 **SEC. 3. EFFECTIVE DATE.**

7           The amendments made by this Act shall apply with  
8           respect to advice referred to in section 3(21)(A)(ii) of the  
9           Employee Retirement Income Security Act of 1974 or sec-  
10          tion 4975(e)(3)(B) of the Internal Revenue Code of 1986  
11          provided on or after January 1, 2002.